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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160225143-6143-01]

RIN 0648-BF61

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Snapper-Grouper Fishery off the Southern Atlantic States;
Regulatory Amendment 25**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Regulatory Amendment 25 for the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Regulatory Amendment 25) as prepared and submitted by the South Atlantic Fishery Management Council (Council). If implemented, this proposed rule would revise the commercial and recreational annual catch limits (ACLs), the commercial trip limit, and the recreational bag limit for blueline tilefish. Additionally, this proposed rule would revise the black sea bass recreational bag limit and the the commercial and recreational fishing years for yellowtail snapper. The purpose of this proposed rule for blueline tilefish is to increase the optimum yield (OY) and ACLs

based on a revised acceptable biological catch (ABC) recommendation from the Council's Scientific and Statistical Committee (SSC). The purpose of this proposed rule is also to achieve OY for black sea bass and adjust the fishing year for yellowtail snapper to better protect the species while allowing for economic benefits to fishers.

DATES: Written comments must be received on or before [*insert date 15 days after date of publication in the **Federal Register***].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2016-0042" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0042, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rick DeVactor, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change.

All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in required fields if you wish to remain anonymous).

Electronic copies of Regulatory Amendment 25, which includes an environmental assessment, a Regulatory Flexibility Act analysis, regulatory impact review, and fishery impact statement, may be obtained from *www.regulations.gov* or the Southeast Regional Office Web Site at http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2015/reg_am25/index.html.

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, NMFS, SERO, telephone: 727-551-5720 or email: *rick.devictor@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic Region is managed under the FMP and includes blueline tilefish, black sea bass, and yellowtail snapper. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a

continuing basis, OY from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, while also protecting marine ecosystems.

Stock Status

In 2013, the Southeast Data, Assessment and Review (SEDAR) assessment (SEDAR 32) for blueline tilefish found the stock to be undergoing overfishing, based on data through 2011. In 2015, the Council specified a blueline tilefish ACL in Amendment 32 to the FMP, based on the results of SEDAR 32 and an ABC recommendation from the Council's SSC, and on March 30, 2015, NMFS issued a final rule to implement Amendment 32 (80 FR 16583). In Regulatory Amendment 25, the Council is revising the blueline tilefish ACL based on a new ABC recommendation from the Council's SSC, and an increase in the buffer between ABC and ACL to account for management uncertainty.

In 2013, the SEDAR 25 Update determined that the black sea bass stock in the South Atlantic is neither overfished nor undergoing overfishing, and that the stock is rebuilt. The final rule to implement Regulatory Amendment 19 established increases in the total ACL and commercial and recreational ACLs for black sea bass (78 FR 58249, September 23, 2013).

The state of Florida completed a stock assessment for yellowtail snapper in May 2012. The assessment determined that the stock, in the South Atlantic and Gulf of Mexico waters (state and Federal waters) combined, is neither overfished nor undergoing overfishing. The final rule to implement Regulatory Amendment 15 to the FMP implemented the current ACLs for this stock in the South Atlantic (78 FR 49183, August 13, 2013).

Management Measures Contained in This Proposed Rule

This proposed rule would revise the commercial and recreational ACLs, commercial trip limit, and recreational bag limit for blueline tilefish; revise the recreational bag limit for black sea bass; and revise the fishing year for the yellowtail snapper commercial and recreational sectors. All ABC and ACL weights in this proposed rule are expressed in round weight.

Blueline Tilefish ACLs

This proposed rule would revise the commercial and recreational ACLs for blueline tilefish. The current commercial ACLs are 26,766 lb (12,141 kg) for 2016, 35,785 lb (16,232 kg) for 2017, and 44,048 lb (19,980 kg) for 2018, and subsequent fishing years. The current recreational ACLs are 26,691 lb (12,107 kg) for 2016, 35,685 lb (16,186 kg) for 2017, and 43,925 lb (19,924 kg) for 2018, and subsequent fishing years. These ACLs were implemented through Amendment 32 to the FMP (80 FR

16583, March 30, 2015). This proposed rule would increase both the commercial and recreational ACLs for blueline tilefish in the South Atlantic. The commercial ACL would be set at 87,521 lb (39,699 kg) and the recreational ACL would be set at 87,277 lb (39,588 kg).

In Regulatory Amendment 25, the Council is revising the blueline tilefish ACL based on a new ABC recommendation from the Council's SSC. Following the SEDAR 32 assessment, the SSC provided an ABC recommendation to the Council based on the ABC projections developed after SEDAR 32. In September 2015, the SSC raised concerns about the utility of projections from SEDAR 32 in specifying the ABC and concluded that the ABC projections do not represent the best scientific information available and are not adequate to support blueline tilefish fishing level recommendations for either current or future years. Based on that determination, the SSC revised their blueline tilefish ABC recommendation to set the ABC at the equilibrium yield at 75 percent of the fishing mortality that produces the maximum sustainable yield (224,100 lb (101,650 kg)). The Council accepted the SSC's recommendations and determined that this revised ABC is sufficient to prevent the overfishing of blueline tilefish.

The Council is also revising the ACL to increase the buffer between the ABC and ACL from 2 percent to 22 percent. The

increase in the buffer is to account for management uncertainty, such as increased landings north of the Council's area of jurisdiction. In Amendment 32 to the FMP, the Council set the total ACL (combined commercial and recreational ACL) for the South Atlantic at 98 percent of the recommended ABC for the entire Atlantic region to account for management uncertainty, since the stock assessment was coast-wide and the Council was aware that some landings of blueline tilefish occurred north of North Carolina. In Regulatory Amendment 25, the Council has determined to set the total ACL at 78 percent of the ABC. This decision is based on a comparison of the landings between the South Atlantic and Greater Atlantic Regions (Maine through Virginia) which indicate that 22 percent of the landings from 2011-2014 are from the Greater Atlantic Region.

Blueline Tilefish Commercial Trip Limit

The current commercial trip limit for blueline tilefish is 100 lb (45 kg), gutted weight; 112 lb (51 kg), round weight, and was implemented in Amendment 32. The Council selected that trip limit as a way to slow the commercial harvest of blueline tilefish, potentially lengthen the commercial fishing season, and reduce the risk of the commercial ACL being exceeded. This proposed rule would increase the blueline tilefish commercial trip limit to 300 lb (136 kg) gutted weight; 336 lb (152 kg), round weight. The Council decided that an appropriate response

to the increase in ABC and proposed increase in total ACL is to increase the commercial trip limit. The increase in the commercial trip limit would reduce adverse socioeconomic effects to commercial fishermen. In addition, the increase in the commercial trip limit is not expected to result in an in-season closure of blueline tilefish.

Blueline Tilefish and Black Sea Bass Recreational Bag Limits

This proposed rule would revise the recreational bag limits for both blueline tilefish and black sea bass. The current blueline tilefish bag limit is one fish per vessel per day for the months of May through August and is part of the aggregate bag limit for grouper and tilefish. There is no recreational retention of blueline tilefish during the rest of the fishing year. This bag limit was implemented in Amendment 32 to the FMP. In conjunction with the proposed increase in the recreational ACL in Regulatory Amendment 25, this proposed rule would increase the recreational bag limit to three fish per person per day for the months of May through August and remain as part of the aggregate bag limit for grouper and tilefish. There would continue to be no recreational retention of blueline tilefish during the months of January through April and September through December, each year.

The current bag limit for black sea bass is 5 fish per person per day and was implemented through the final rule for Regulatory Amendment 9 to the FMP (76 FR 34892, June 15, 2011). The proposed rule would increase the recreational bag limit for black sea bass to 7 fish per person per day. The Council decided to increase the bag limit to help achieve OY, since the recreational ACL has not been met in recent years. Additionally, increasing the bag limit to 7 fish is not expected to result in exceeding the recreational ACL or requiring an in-season closure of the recreational sector.

Yellowtail Snapper Fishing Year

The current fishing year for the yellowtail snapper commercial and recreational sectors in the South Atlantic is January 1 through December 31. The in-season accountability measure for the commercial sector is to close yellowtail snapper when the commercial ACL is met or projected to be met. Recently, commercial harvest of yellowtail snapper in the South Atlantic waters was closed from October 31, 2015, through December 31, 2015, because the commercial ACL was met (80 FR 65970, October 28, 2015).

This proposed rule would revise the fishing year for both the commercial and recreational sectors to be August 1 through July 31, each year. Changing the start of the fishing year to August 1 would benefit both sectors because it would ensure that

harvest is open during the winter months when yellowtail snapper obtain a higher price per pound commercially and during peak tourist season in south Florida, where the majority of yellowtail snapper harvest takes place. Additionally, if an in-season closure for the commercial sector were to occur as a result of the ACL being met, it is likely that such a closure would occur later in the fishing year. With a fishing year start date of August 1, then it is more likely that any such closure would coincide with the yellowtail snapper peak spawning period of May through June, thereby possibly providing some additional biological benefits to the stock.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Regulatory Amendment 25, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

No duplicative, overlapping, or conflicting Federal rules have been identified.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if

adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows.

The proposed rule would directly apply to anglers that harvest blueline tilefish, black sea bass, and yellowtail snapper in the South Atlantic exclusive economic zone (EEZ). Anglers are not considered small entities as that term is defined in 5 U.S.C. 601(6), whether fishing from for-hire fishing (charter vessel or headboat), private or leased vessels. Consequently, any impacts of the proposed rule on anglers are not considered in this analysis.

The proposed rule would directly apply to finfish commercial fishing businesses that harvest blueline tilefish and yellowtail snapper in the South Atlantic EEZ. An annual average of 123 vessels harvested blueline tilefish and an annual average of 256 vessels harvested yellowtail snapper in the South Atlantic EEZ from 2010 through 2014.

The Small Business Administration established size criteria for all major industry sectors in the U.S., including finfish fishing. A business involved in finfish fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$20.5 million (NAICS code 114111) for all of its affiliated

operations worldwide. The average annual dockside revenue of a vessel that lands blueline tilefish is estimated to be \$74,907 (2014 dollars), and the average annual dockside revenue of a vessel that lands yellowtail snapper is estimated to be \$39,300 (2014 dollars). NMFS estimates that the 123 vessels that harvest blueline tilefish and 256 vessels that harvest yellowtail snapper are operated by 107 and 223 businesses, respectively, and NMFS concludes that all of these businesses are small.

The proposed rule would increase the commercial ACL of blueline tilefish, which would allow for increases in average annual landings of up to 48,582 lb (22,036 kg) and average annual dockside revenues of up to \$107,366 (2014 dollars). Those increases divided across the 107 small businesses that harvest blueline tilefish would yield an average annual benefit from increased dockside revenue of \$1,003 per business.

The proposed rule would increase the commercial trip limit for blueline tilefish from 100 lb (45.4 kg) to 300 lb (136 kg), gutted weight. Prior to 2015, there was no commercial trip limit and from 2010 through 2014, an annual average of 82 vessels operated by an estimated 71 small businesses landed less than 100 lb (45 kg) per trip and an annual average of 41 vessels operated by an estimated 36 small businesses landed more than 100 lb (45 kg) per trip. The trip limit increase is expected to benefit the 36 small businesses that had landings greater than

100 lb (45 kg), and their combined annual dockside revenues are expected to increase from \$66,200 to \$78,489 (2014 dollars). The increases in annual dockside revenues would not be equal. Eleven of the 36 small businesses would have an average annual increase from \$7 to \$729, six would have an average annual increase from \$736 to \$1,458, and 19 would have an average annual increase of \$3,249.

The proposed rule would revise the commercial fishing year for yellowtail snapper from January 1 through December 31 to August 1 through July 31. From 2012 through 2014, the commercial fishing year remained open for all 12 months; however, in 2015, the commercial season closed in October when landings reached the commercial ACL. This analysis presumes the 2015 rate of commercial landings is indicative of future annual landings and, therefore, concludes that future 12-month seasons will close by the end of the 10th month. The proposed action to revise the commercial fishing year would change the two months when the season is expected to be closed: from November and December to June and July. From 2010 to 2014, dockside prices of yellowtail snapper were, on average, lowest from May through July and higher in November and December. That suggests that the proposed rule could benefit the 223 small businesses that harvest yellowtail snapper because the 2 months of the season that are

expected to be closed (June and July) would have lower dockside prices than November and December.

The proposed rule would also adjust the recreational bag limit for blueline tilefish, increase the recreational bag limit for black sea bass, and modify the recreational fishing year for yellowtail snapper. Those actions are not relevant to this analysis because they directly affect anglers and anglers are not small entities as explained earlier. Because this proposed rule would not have a significant direct adverse economic effect on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Black sea bass, Blueline tilefish, Commercial, Fisheries, Fishing, Recreational, South Atlantic, Yellowtail snapper.

Dated: May 19, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.7, add paragraph (f) to read as follows:

§ 622.7 Fishing years.

* * * * *

(f) South Atlantic yellowtail snapper--August 1 through July 31 .

3. In § 622.187:

a. Revise paragraph (b) (2) (iii);

b. Remove and reserve paragraph (b) (2) (iv); and

c. Revise paragraph (b) (7) .

The revisions read as follows:

§ 622.187 Bag and possession limits.

* * * * *

(b) * * *

(2) * * *

(iii) No more than one fish may be a golden tilefish; and

* * * * *

(7) Black sea bass--7.

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4. In § 622.191, revise paragraph (a)(10) to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(10) *Blueline tilefish*. Until the ACL specified in § 622.193(z)(1)(i) is reached or projected to be reached, 300 lb (136 kg), gutted weight; 336 lb (152 kg), round weight . See § 622.193(z)(1)(i) for the limitations regarding blueline tilefish after the commercial ACL is reached.

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5. In § 622.193, revise paragraph (z) to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

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(z) *Blueline tilefish*—(1) *Commercial sector*. (i) If commercial landings for blueline tilefish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 87,521 lb (39,699 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of blueline tilefish is prohibited and harvest or possession of blueline tilefish in or from the South Atlantic

EEZ is limited to the bag and possession limits. These bag and possession limits apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e., in state or Federal waters.

(ii) If commercial landings exceed the ACL, and the combined commercial and recreational ACL (total ACL) specified in paragraph (z)(3) of this section, is exceeded, and blueline tilefish is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial ACL for that following year by the amount of the commercial ACL overage in the prior fishing year.

(2) *Recreational sector.* (i) If recreational landings for blueline tilefish, as estimated by the SRD, are projected to reach the recreational ACL of 87,277 lb (39,588 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year, unless the RA determines that no closure is necessary based on the best scientific information available. On and after the effective date of such a notification, the bag and possession limits are zero.

(ii) If recreational landings for blueline tilefish, exceed the applicable recreational ACL, and the combined commercial and recreational ACL (total ACL) specified in paragraph (z)(3) of this section is exceeded, and blueline tilefish is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, to reduce the length of the recreational fishing season in the following fishing year to ensure recreational landings do not exceed the recreational ACL the following fishing year. When NMFS reduces the length of the following recreational fishing season and closes the recreational sector, the following closure provisions apply: the bag and possession limits for blueline tilefish in or from the South Atlantic EEZ are zero. Additionally, the recreational ACL will be reduced by the amount of the recreational ACL overage in the prior fishing year. The fishing season and recreational ACL will not be reduced if the RA determines, using the best scientific information available, that no reduction is necessary.

(3) The combined commercial and recreational sector ACL (total ACL) is 174,798 lb (79,287 kg), round weight.